Si Soo Hong (administrator of estate of Si Ching Boon (deceased)) v Si Hock Seng & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N-02(NCvC)(W)-64–01 OF 2022
KAMALUDIN MD SAID, SEE MEE CHUN AND HASHIM HAMZAH JJCA
3 SEPTEMBER 2024

Contract — Agreement — Agreement for equal share in lands — Lands contained restriction-in-interest that they could not be transferred to more than one person — Beneficiaries of deceased landowner accordingly agreed that lands be transferred to one sibling — Three siblings later claimed lands were held on trust for all the brothers in equal shares based on agreements to that effect signed by all the brothers — Whether agreements were invalid/nullities as they described all the brothers as co-owners of the lands — Whether one brother who signed the agreements was a minor at the time and hence incompetent to contract — Whether agreements contained no details as to how lands were to be divided and who was to get what — Whether no trust had come into being as there was uncertainty of subject-matter

The respondents together with one Si Ching Boon ('the deceased') and one Si Kiam Joo were the male offspring of a woman who owned two pieces of agricultural land ('the lands') during her lifetime. Following her death, her children applied to the district land administrator for a distribution order ('DO') in respect of the lands. the lands were subject to various restrictions in interest, including that they could not be transferred to more than one person. Consequently, the beneficiaries collectively agreed to have the lands transferred to the deceased with the other beneficiaries signing waiver letters giving up their rights to the lands. Pursuant to the DO, the lands were registered solely in the deceased's name. Sometime later, the respondents sued the deceased claiming that he held the lands on trust for all the five male siblings in equal proportions. To back their claim, the respondents produced two undated agreements ('the agreements') signed jointly by them, the deceased and Si Kiam Joo. the agreements — stamped eight months after the date of the DO — stated that the lands were jointly owned by all the five brothers and they had agreed to divide the lands into five equal parts for their respective benefit. The respondents sought an order for the lands to be sold by way of public auction and the proceeds to be divided equally amongst them. On the ground that Si Kiam Joo was a minor when the waiver letters and the agreements were signed, the appellant argued that the agreements were invalid and of no legal effect. The High Court allowed the respondents' claim holding that despite Si Kiam Joo's minority at the material time the DO was valid and binding as were the

agreements which had created a valid trust in favour of the five brothers. The instant appeal was against the High Court's decision.

Held, unanimously allowing the appeal and setting aside the High Court's decision:

(1) Despite Si Kiam Joo's minority at the time he signed the waiver letter, the DO remained valid and binding so long as it was never set aside (see para 19).

(2) the agreements were, however, not valid for the following reasons: (a) Si Kiam Joo's incompetency to contract on account of his minority; (b) contrary to what was stated in the agreements, only the deceased as proprietor of the lands could determine how the lands were to be distributed; (c) the restriction-in-interest on the lands provided that the lands could not be transferred to more than one person; hence, the five brothers could not claim in the agreements that they jointly owned the lands; and (d) there was uncertainty as to how the lands were to be divided and who was to get what as there were no measurements or dimensions stated in the agreements (see paras 22–36).

(3) Since there was no certainty of subject, no trust had been created. Furthermore, since the agreements were signed by a minor, there was no constructive trust. To hold otherwise would amount to giving effect to a void agreement (see paras 39 & 41).

[Bahasa Malaysia summary

Responden bersama seorang Si Ching Boon ('si mati') dan seorang Si Kiam Joo adalah anak lelaki kepada seorang wanita yang memiliki dua keping tanah pertanian ('tanah tersebut') semasa hayatnya. Selepas kematiannya, anak-anaknya memohon kepada pentadbir tanah daerah untuk perintah pembahagian ('PP') berkenaan dengan tanah tersebut. Tanah tersebut tertakluk kepada pelbagai sekatan kepentingan, termasuk bahawa ia tidak boleh dipindahmilik kepada lebih daripada seorang. Lanjutan itu, benefisiari secara kolektif bersetuju untuk memindahmilik tanah tersebut kepada si mati dengan benefisiari lain menandatangani surat penolakan menyerahkan hak mereka ke atas tanah tersebut. Menurut PP, tanah-tanah tersebut didaftarkan atas nama si mati semata-mata. Beberapa ketika kemudian, responden menyaman si mati dengan mendakwa dia memegang tanah secara amanah untuk kesemua lima beradik lelaki itu dalam bahagian sama rata. Untuk menyokong tuntutan mereka, responden mengemukakan dua perjanjian tidak bertarikh ('perjanjian tersebut') yang ditandatangani bersama oleh mereka, si mati dan Si Kiam Joo. Perjanjian — yang disetem lapan bulan selepas tarikh PP — menyatakan bahawa tanah-tanah tersebut dimiliki bersama oleh kesemua lima beradik dan mereka telah bersetuju untuk membahagikan tanah tersebut kepada lima bahagian yang sama demi kepentingan masing-masing.

A Responden memohon perintah supaya tanah tersebut dijual secara lelongan awam dan hasilnya dibahagikan sama rata antara mereka. Atas alasan Si Kiam Joo masih di bawah umur apabila surat penolkan dan perjanjian ditandatangani, perayu berhujah bahawa perjanjian itu tidak sah dan tidak mempunyai kesan undang-undang. Mahkamah Tinggi membenarkan
B tuntutan responden dengan memutuskan bahawa walaupun Si Kiam Joo adalah minoriti pada masa itu, PP adalah sah dan mengikat seperti juga perjanjian yang telah mewujudkan amanah yang sah memihak kepada lima beradik itu. Rayuan semasa adalah terhadap keputusan Mahkamah Tinggi.

C **Diputuskan**, sebulat suara membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

(1) Walaupun Si Kiam Joo adalah minoriti pada masa dia menandatangani surat penolakan, PP kekal sah dan mengikat selagi ia tidak pernah
D diketepikan (lihat perenggan 19).

(2) Perjanjian itu, bagaimanapun, tidak sah atas sebab-sebab berikut: (a) Si Kiam Joo tidak kompeten untuk berkontrak kerana minoritinya; (b) bertentangan dengan apa yang dinyatakan dalam perjanjian, hanya si mati sebagai pemilik tanah boleh menentukan bagaimana tanah itu
E akan diagihkan; (c) sekatan kepentingan ke atas tanah dengan syarat tanah itu tidak boleh dipindahmilik kepada lebih daripada seorang. Oleh itu, lima beradik itu tidak boleh menuntut dalam perjanjian bahawa mereka memiliki tanah secara bersama; dan (d) terdapat ketidakpastian tentang bagaimana tanah itu akan dibahagikan dan siapa
F yang akan mendapat apa kerana tidak ada ukuran atau dimensi yang dinyatakan dalam perjanjian (lihat perenggan 22–36).

(3) Oleh kerana tidak ada kepastian perkara utama, tiada amanah telah diwujudkan. Tambahan pula, kerana perjanjian itu ditandatangani oleh
G kanak-kanak bawah umur, tiada amanah konstruktif. Untuk memutuskan sebaliknya akan terjumlah memberi kesan kepada perjanjian yang tidak sah (lihat perenggan 39 & 41).]

Cases referred to

H *Chong Yaw Ming v Hew Ah Fatt* [2021] MLJU 999, CA (refd)
Leha binte Jusoh v Awang Johari bin Hashim [1978] 1 MLJ 202, FC (refd)
Ng Poh Hong (as the executor for the estate of Ng Hai, deceased) v Kek Yok Lan (as the co-executor for the estate of So Lian Lee, deceased) & Anor [2018] MLJU 1283, CA (refd)

I **Legislation referred to**

Age of Majority Act 1971 s 2
Contracts Act 1950 s 11
Land (Group Settlement Areas) Act 1960

Small Estates (Distribution) Act 1955 s 29(1)

Appeal from: Civil Appeal No NA-22NCvC-80–12 of 2017 (High Court, Seremban)

Oh Teik Keng (Oh Teik Keng & Partners) for the appellant.
Tan Meng Loon (Andrew Tan with him) (Alan Tan & Assoc) for the respondent.

See Mee Chun JCA:

INTRODUCTION

[1] This is an appeal by the appellant/defendant against the decision of the High Court ('HC') in allowing the claim of the plaintiffs/respondents. We allowed the appeal and now give our reasons.

PARTIES

[2] The appellant is the administrator of the estate of the late Si Ching Boon ('deceased'). The deceased was his father who passed away in January 2018, after the claim was filed in December 2017.

[3] The respondents are the brothers of the deceased. Together with another brother by the name of Si Kiam Joo and ten other sisters, they were the children of Mdm Chei Chan, deceased since 13 November 1979.

BACKGROUND FACTS

The lands

[4] In her lifetime, Mdm Chei Chan owned two pieces of land, GM 247, Lot 5354 and GM 248, Lot 5582, both in Mukim Labu, District of Seremban ('the lands'). The lands contained the following land use, express conditions and restriction in interest:

Kategori Kegunaan Tanah	Pertanian
Syarat Nyata	Tanah ini hendaklah digunakan untuk tanaman jangka panjang dusun sahaja
Sekatan Kepentingan	i) Tanah ini tertakluk kepada Akta Tanah 1960 (GSA) dan tidakboleh dipindah milik kecuali bersekali dengan tapak rumah dan lading kepada penerima sama,

ii) Tanah ini tidak boleh dipindahmilik, dipajak dan digadai kecuali mendapat kebenaran Pihak Berkuasa Negeri.

iii) Tanah ini tidak boleh dipajak, diberikan pajakan kecil, dipecah sempadan atau dipindahmilik kepada lebih daripada seorang;

iv) Tanah ini mestilah ditadbirkan oleh Lembaga Kemajuan Tanah Persekutuan, sebuah badan berkanun yang ditubuhkan di bawah Undang-Undang Kemajuan Tanah 1956 (No. 20/1956) mengikut syarat-syarat yang diperuntukan di dalam perjanjian yang ditandatangani oleh pemilik dengan lembaga tersebut atau lain-lain badan yang ditetapkan oleh Kerajaan Negeri.

Distribution order dated 24 April 1987

[5] After the death of Mdm Chei Chan, the siblings intended to apply to the District Land Administrator for the distribution of the lands. Due to the restriction that the lands could only be transferred to one person, all the beneficiaries signed a waiver of their rights, to the deceased, as the male son of Mdm Chei Chan.

[6] The distribution order dated 24 April 1987 ('DO') for the lands was issued with the deceased listed as being entitled to them. Subsequently, the deceased was registered as the proprietor of the lands.

Undated agreements on the lands

[7] There were two undated agreements signed by the deceased, the respondents and Si Kiam Joo ('the agreements'). One was in respect of Lot 5354 and the other in respect of Lot 5582. In both the agreements, it was agreed that the land was to be divided into five pieces of equal size so that each one brother would own a piece.

[8] The agreements were stamped on 4 December 1987.

The respondents' claim and the defence

[9] The respondents' claim is premised on the DO arising from which the agreements were signed which created a trust in the respondents and Si Kiam Joo.

[10] The reliefs sought are essentially for a declaration that the deceased held 4/5 of the lands for the benefit and that of Si Kiam Joo, who has since passed away; that the respondents were the beneficial owner of 3/5 of the lands and the estate of Si Kiam Joo was 1/5 beneficial owner of the lands; the lands to be disposed of by a public auction at a price to be determined by an auctioneer and the proceeds to be divided equally; and other consequential relief.

[11] The defence raised was that when Si Kiam Joo signed the waiver and the agreements, he was a minor. He was then 16 years seven months and 17 years three months, respectively. This rendered the waiver a nullity with the result being that a constructive trust arose and the deceased held 1/5 share in the lands in favour of the minor Si Kiam Joo. Due to the minor's age at the time of the agreements, these agreements too were null and void. The respondents also had no right to claim for the estate of Si Kiam Joo.

DECISION OF THE HC

[12] The grounds of judgment ('GOJ') of the HC judge can be found in encl 11/4–25.

[13] The HCJ found that the DO was valid and binding until it is set aside pursuant to s 29(1) of the Small Estates (Distribution) Act 1955. Here there was no such application to set aside nor any appeal against the granting of the DO within the time prescribed. Refer to paras 22 to 25 GOJ.

[14] The HCJ further found that the two agreements were valid declarations of trust on behalf of the five siblings. The deceased being the registered proprietor could enter into the agreements. The agreements met the elements of a trust, namely certainty of words (intention to create a trust), certainty of subject (the lands) and certainty of object (the names of the beneficiaries). Refer to paras 26 to 36 GOJ.

[15] The lack of consideration was not material as this would only be relevant where the trust 'tidak diisythiharkan dengan sempurna' (para 37 GOJ). The consideration would be natural love and affection and the deceased had resided on the lands and enjoyed the benefits and proceeds from the lands, ever since 1987.

[16] The conclusion was as follows:

> 40. Mahkamah ini mendapati bahawa walaupun Si Kiam Joo di bawah umur semasa tarikh perintah pembahagian pada 24 April 1987. Atas alasan si Ching Boon meneruskan juga permohonan perintah pembahagian kepada beliau dan tiada permohonan untuk ketepikan perintah pembahagian, oleh itu secara kontrak mengikat pihak-pihak.

41. Perjanjian-perjanjian bertarikh 4 Disember 1987 membawa kesan yang sama Si Ching Boon si mati sediakannya dan tandatangan 1/5 untuk beliau plaintif-plaintif dan Si Kiam Joo.

OUR DECISION

[17] The claim of the respondents is derived from the agreements where the deceased is said to have created a trust over the lands in favour of himself, the respondents and Si Kiam Joo. According to the respondents, soon after the DO was granted, the agreements were entered into.

[18] It is not disputed that Si Kiam Joo was a minor at the time he signed the waiver of his right to the lands and when he signed the agreements.

Validity of the DO

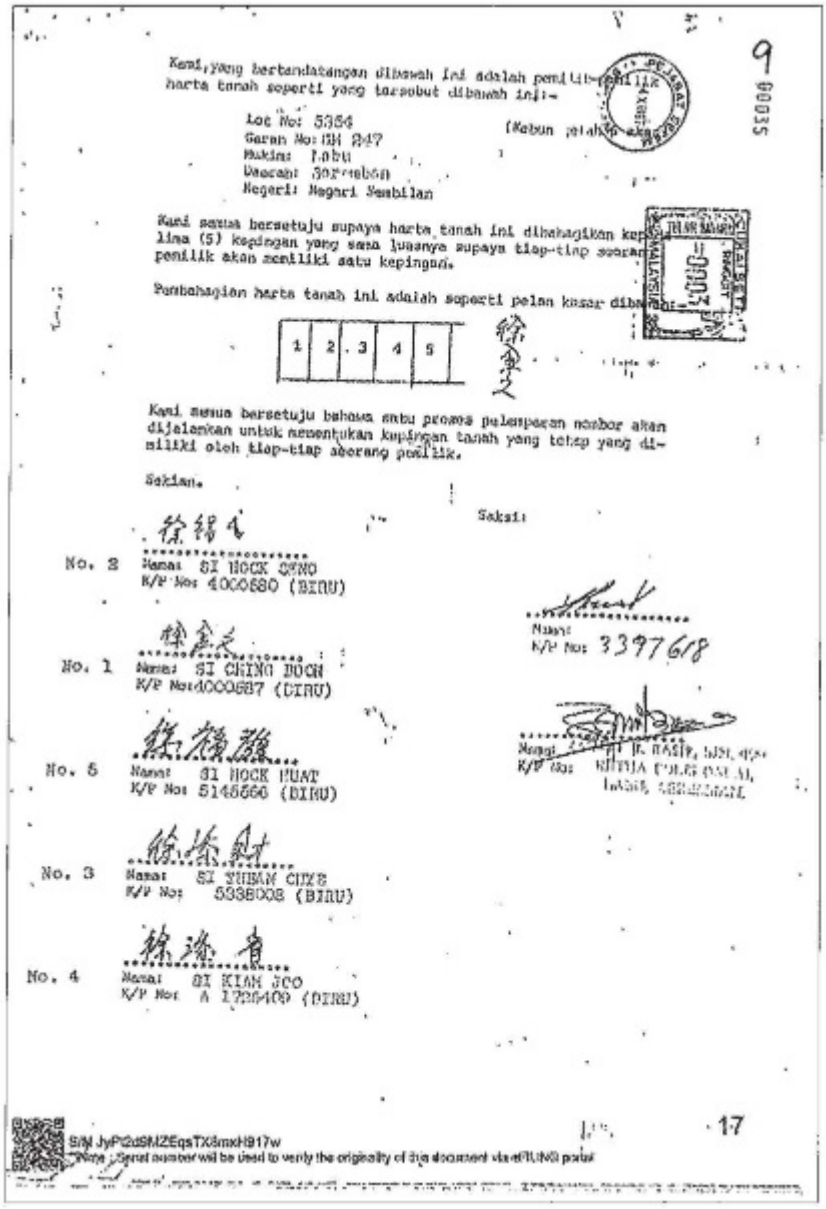
[19] We find and agree with the HCJ that the DO remains valid and binding despite Si Kiam Joo being a minor at the time he signed the waiver. The law is clear that until the DO is set aside, it remains valid and in force. Here, it is also not disputed there was no application to set aside the DO.

[20] We refer to *Ng Poh Hong (as the executor for the estate of Ng Hai, deceased) v Kek Yok Lan (as the co-executor for the estate of So Lian Lee, deceased) & Anor* [2018] MLJU 1283 where this court said the following:

> 37. There was no appeal against the said distribution order. There was also no application for judicial review to challenge the said distribution order nor an appeal of the said order to the High Court pursuant to s 29(1) of the Small Estates (Distribution) Act 1955, read together with r 10(1)(c) of the Small Estates (Distribution) Regulations 1955, which provide for the statutory time limit of 14 days to file an appeal to the High Court against any order, decision or act made or done by the Land Administrator under the said Act.
>
> ...
>
> 40. In our view, the said distribution order is valid and still in force. It has not been set aside. By virtue of s 19 of the Small Estates (Distribution) Act 1955, the said order shall have the same force and effect as if it was made by a court of law and there shall be no appeal against the said decision except as provided under s 29 of the Act which the defendants had failed to do, in such event the said distribution order became and remains final and binding on all the parties including both the defendants. There is no reason not to enforce and implement the said distribution order.

Validity of the agreements

[21] The larger issue is the validity of the agreements. We refer to the agreement on Lot 5354 in encl 6/17 as below;



Kami,yang berbandatangan dibawah ini adalah pemilik-pemilik harta tanah seperti yang tersebut dibawah ini:-

Lot No: 5354
Geran No: GM 247
Mukim: Labu
Daerah: Seremban
Negeri: Negeri Sembilan

Kami semua bersetuju supaya harta tanah ini dibahagikan kepada lima (5) kepingan yang sama luasnya supaya tiap-tiap seorang pemilik akan memiliki satu kepingan.

Pembahagian harta tanah ini adalah seperti pelan kasar dibawah ini:-

1	2	3	4	5

Kami semua bersetuju bahawa satu proses pelanpasan nombor akan dijalankan untuk menentukan kepingan tanah yang tetap yang dimiliki oleh tiap-tiap seorang pemilik.

Sekian.

Sekian.

No. 2 Nama: SI HOCK SENG K/P No: 4000680 (BIRU)

No. 1 Nama: SI CHING BOON K/P No: 4000687 (BIRU)

No. 5 Nama: SI HOCK HUAT K/P No: 5145566 (BIRU)

No. 3 Nama: SI YUBAN CHYE K/P No: 5338008 (BIRU)

No. 4 Nama: SI KIAN JOO K/P No: A 1220409 (BIRU)

K/P No: 3397618

17

The contents of this agreement are identical to the one for Lot 5582 which can be found in encl 6/18.

[22] We find the agreements are not valid and our reasons are as follows.

[23] First, it is not disputed that one of the signatories, Si Kiam Joo was a

minor ('minor') when he signed the agreements. Section 11 of the Contracts Act 1950 provides that persons competent to contract are those of the age of majority which by definition in s 2 of the Age of Majority Act 1971 is 18 years.

[24] For ease of reference, we refer to the aforesaid provisions as set out below:

> Section 11 Contracts Act
>
> 11 *Who are competent to contract*
>
> *Every person is competent to contract who is of the age of majority according to the law to which he is subject*, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.
>
> Section 2 Age of Majority Act 1971
>
> 2 Age of majority
>
> Subject to section 4, *the minority of ail males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority*. (Emphasis added.)

[25] In *Leha binte Jusoh v Awang Johari bin Hashim* [1978] 1 MLJ 202 (FC), it was said as follows at p 203:

> An agreement of sale is set out at pp 51–52 of the record. The appellant, while disclaiming knowledge of it, contends that as it is admitted that the respondent at the date of the agreement, was incompetent to contract, having been born on 31 March 1937, it is null and void, and no specific performance based thereon can be decreed. The Privy Council in *Mohori Bibee v Dhumodas Ghose* ruled that 'the (Indian Contracts) Act *makes it essential that all contracting parties should be competent to contract' and specifically enacts that a person incompetent to contract by reason of infancy cannot make a contract within the meaning of the Act*. Our Contracts Act, 1950 is in *pari materia* with the Indian Contracts Act (see ss 10 and 11). The learned judge accordingly held, following *Suraj Narain Dube v Sukhu Aheer & Anor* the agreement of 1 March 1952 to be void and no specific performance can be ordered on the agreement as an agreement for sale. (Emphasis added.)

[26] We find that the HCJ had failed to judicially appreciate the age of the minor at the time of entering into the agreements. The only reference to the age was at the conclusion in para 40 which we have set out earlier 'Mahkamah ini mendapati bahawa walaupun Si Kiam Joo di bawah umur semasa tarikh Perintah Pembahagian pada 24 April 1987'. This was in reference to the minor's age at the time of the DO whereas the issue was on the agreements. In any event, we have found the DO to be valid and enforceable, notwithstanding the minor's age when he signed the waivers.

[27] Second, the deceased was the proprietor of the lands and only he could determine how the lands were to be distributed. However, the express words in

the agreements were 'Kami yang bertandatangan dibawah ini adalah pemilik-pemilik harta tanah seperti yang terse but dibawah in? (first para) and the words 'kami semua bersetuju' (second and third paras). These words would indicate that all five siblings including the minor had determined and agreed on the distribution.

[28] The submission of the respondents was that because the deceased was the proprietor of the lands, the deceased could thus enter into the agreements to confer on the minor a 1/5 share of each land and also to the respondents. As shown by the words indicated, it was an agreement by all the five siblings including the minor.

[29] Aside from the age of the minor, the four siblings describing themselves as 'pemilik-pemilik harta tanah', could not have entered into the agreements.

[30] Third, we refer to the restrictions in interest (i), (ii) and (iii) which we again reproduce:

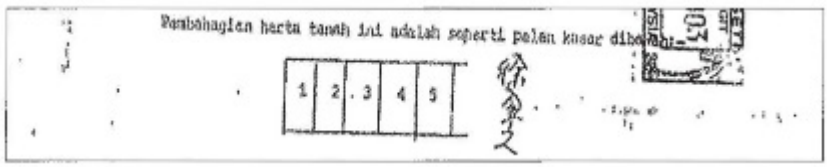
Sekatan Kepentingan	i) Tanah ini tertakluk kepada Akta Tanah 1960 (GSA) dan tidak boleh dipindah milik kecuali bersekali dengan tapak rumah dan lading kepada penerima sama,
	ii) Tanah ini tidak boleh dipindahmilik, dipajak dan digadai kecuali mendapat kebenaran Pihak Berkuasa Negeri.
	iii) Tanah ini tidak boleh dipajak, diberikan pajakan kecil, dipecah sempadan atau dipindahmilik kepada lebih daripada seorang.

[31] The lands are subject to three specific restrictions; namely the Land (Group Settlement Areas) Act 1960 ('the GSA Act') and cannot be transferred except along with the *tapak rumah* and *ladang* to *penerima yang sama*; cannot be transferred except with the consent of the State Authority; and cannot be transferred to more than one person.

[32] With those restrictions in interests, the lands being GSA lands, cannot even be transferred to more than one person, whereas the subject matter of the agreements, if valid, provides for the transfer to five persons.

[33] It was not disputed that the GSA Act did not allow for such a transfer. The respondents only submitted the GSA issue was not raised in the pleadings. We are of the considered opinion that this is a legal issue and can thus be raised.

[34] Fourth, there is uncertainty as to which part of the lands is to be distributed and to whom. We find and agree with the appellant's counsel on this issue. We refer to the agreement on Lot 5354 which purports to distribute the land:



[35] What it shows is a drawing depicting five adjoining rectangles numbered 1–5 from left to right. There is no indication to show which way is north and no bearings or coordinates were provided to show the exact location of the division. The lack of measurements and dimensions renders it uncertain as to how the lands can be divided into five equal pieces and who is to get what.

[36] We therefore find that the agreements are not valid. The determination of this one issue is sufficient to dispose of the appeal.

Trust

[37] For completeness we will briefly deal with the issue of trust where it was submitted by the respondents that the GSA Act only limits registration to not more than one person but does not prohibit the declaration of trust by a registered owner for the benefit of other beneficial owners. Reference was made to a decision of this court in *Chong Yaw Ming v Hew Ah Fatt* [2021] MLJU 999.

[38] Although the subject land in that case was also GSA land and there was a declaration of trust that the plaintiff and defendant each held half share, the court did not appear to focus too much on the fact of the GSA land. This is apparent from the issues identified:

> OUR DECISION
>
> [16] The dispute between the plaintiff and the defendant with regard to property held under Hakmilik GM 2742, Lot No 3631 Mukim Sabai, Tempat Rancangan Tanah Pinggir Sg Dua, Daerah Bentong, Pahang ('the said Land') are as follows:
>
> (a) whether the plaintiff had contributed financially towards the purchase of the said land?
>
> (b) whether the plaintiff is the co-owner of the said land?
>
> (c) whether the declaration of trust dated 25 July 2011 was signed by the defendant and not the plaintiff?

(d) whether the defendant had breached cl 6 of the declaration of trust? A

(e) whether cll 4 and 5 of the declaration of trust was unreasonable and unjust and mala fide?

(f) whether the plaintiff was entitled to sell the said land?

B

[39] We also find there was no certainty of subject as stated earlier, and therefore, there could be no trust created.

[40] We turn again to *Leha binte Jusoh* where the earlier passage we referred to stated that an agreement entered into by a minor is void. Now we refer to the passage after that at p 203: C

> However, he went on to hold that the purchase price having been paid in full and the respondent let into possession, a constructive trust had been created and the deceased held the lands in trust for the respondent. W*ith respect, to import a constructive trust in the present instance and grant a declaration that the appellant as administratrix of Mat bin Jusoh, deceased, held deceased's share as trustee thereof for and on behalf of respondent and that respondent is entitled to possession of the portions occupied pursuant to the agreement and order such trust to be specifically performed is in effect to enforce an agreement which is void ab initio.* (Emphasis added.) D

E

[41] This means that where it concerns an agreement signed by a minor, there can never be a constructive trust as that would tantamount to giving effect to a void agreement.

CONCLUSION F

[42] For the reasons given above, we allowed the appeal and set aside the order of the HC. We made no order as to costs.

Appeal allowed, High Court's decision set aside. G

Reported by Ashok Kumar

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